

AMENDMENTS TO THE DRAWINGS

The attached "Replacement Sheets" of drawings have been amended pursuant to the Examiner's suggestion and include changes to Figure 1. The attached "Replacement Sheets", which include Figures 1-6, replace the original sheets including Figures 1-6. No new matter has been added.

Attachment: Replacement Sheets

REMARKS

Claims 1-17 and 19-25 remain pending in the application. Claims 2 and 3 have been cancelled without prejudice as Applicants may wish to pursue the subject matter of these claims in future prosecution. New Claims 26-28 have been presented for the Examiner's consideration. Reconsideration of the rejections set forth in the aforementioned Office Action is respectfully requested in view of the above amendments, new claims and following remarks. The basis for these amendments and new claims can be found throughout the specification, claims and drawings as originally filed.

ALLOWABLE SUBJECT MATTER

Claims 3, 16 and 25 stand objected to as "being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Claim 1 has been amended so as to correspond with Claim 3 rewritten in independent form. Claims 10 and 17 have similarly been amended. Accordingly, Claims 1, 10 and 17 should be in condition for allowance.

OBJECTION TO THE DRAWINGS

The drawings stand objected to for certain informalities. Applicants have attached revised drawings ("Replacement Sheets") for the Examiner's approval. In the Replacement Sheets, "d₁" and "d₂" have been added to Figure 1 in response to the Examiner's objection and pursuant to the Examiner's suggestion. Paragraph [0031] has

been amended in order to present a more consistent disclosure. No new matter has been added. Accordingly, Applicants respectfully request that the Examiner enter these replacement drawings, and reconsider and withdraw the objection to the drawings.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

Claims 1, 2, 4, 7, 9, 10, 12, 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garver et al., U.S. Patent No. 5,067,622. Applicants respectfully traverse this rejection.

Claims 6, 8, 11, 17, 19, 20 and 22-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the reference as applied to Claims 1 and 10 above, and further in view of Krishnakumar et al., U.S. Patent No. 5,303,834. Applicants respectfully traverse this rejection.

Claims 5, 13 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the references as applied to Claim 17 above, and further in view of Singier, U.S. Patent No. 3,325,031. Applicants respectfully traverse this rejection.

The Examiner alleges that Garver et al. renders Applicants' claimed disclosure obvious noting that the "flex panels in the hot fill container at 83 which are in opposed relationship as shown in Figure 6. The columns or posts are also clearly shown in opposition and the taper results in a distance near the upper portion which is less than the distance from the axis at the lower portion, as claimed. Member 81 defines a shoulder below the neck with a waist at 87. Members 85 define rings in the lower portion 77." Applicants respectfully disagree with the Examiner's characterization that

Garver et al., alone or in combination with any of the other references cited, renders Applicants' claimed disclosure obvious.

Applicants make the following observations regarding the Garver et al. cited reference. Garver et al. discloses a plastic container having a “. . . generally frusto-conical shape neck portion 76, a cylindrically shaped side wall portion 77 and a circular end wall portion 78. Neck portion 76 in turn, for definitional purposes, has a frusto-conical wall segment 80 and a bulbous neck segment 81 which extends to and terminates at mouth portion 72. Conventional type vacuum deformation panels 83 are formed in frusto-conical neck segment 81, there being six panels shown in the preferred embodiment. Heretofore, panels 83 have been traditionally molded in side wall portion 77 and the purpose of the panels is to deflect radially inwardly when a vacuum is drawn in container 70.” See column 18, lines 53-65. Accordingly, Garver et al. teaches away from Applicants' claimed disclosure.

In contradistinction to the Garver et al. cited reference, Applicants' claimed disclosure teaches a plastic container having a “sidewall portion including a pair of diametrically opposed flex panels”. (Emphasis added). Additionally, the flex panels located in the sidewall of Applicants' container include a longitudinal midpoint wherein a minimum diameter of the container is defined generally about this longitudinal midpoint. Specifically in this regard, new independent Claims 26-28 recite a sidewall including a pair of diametrically opposed flex panels (similar to independent Claims 1, 10 and 17) having “a longitudinal midpoint, said flex panels defining a minimum diameter for the container generally about said longitudinal midpoint.” Garver et al., alone or in combination with Krishnakumar et al. or any of the other references cited, does not

disclose, teach or suggest any similar structure such as a sidewall having a pair of diametrically opposed flex panels formed therein, the flex panels having a longitudinal midpoint wherein a minimum diameter for the container is defined generally about such longitudinal midpoint as recited in independent Claims 26-28 of Applicants' claimed disclosure. There is no motivation or incentive in Garver et al., alone or in combination with Krishnakumar et al. or any of the other references cited, to arrive at Applicants' disclosure as claimed.

Accordingly, for the sake of brevity, it is respectfully submitted that in view of Applicants' arguments stated above, Garver et al. and Krishnakumar et al. are improper primary and/or secondary references, and Applicants' claims are patentably distinct with respect thereto, as well as no teaching in existence to suggest the combination of the references. Applicants respectfully submit that the Examiner has failed to identify any motivation by one of ordinary skill in the art to combine or modify the art to arrive at the claimed disclosure other than the impermissible use of hindsight. Obviousness is not established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting such combination.

While it is Applicants' view that the claims as written are not obvious in light of the cited art and fully comply with Section 103, in the interest of expediting prosecution and without prejudice to pursuing this and related subject matter in future applications, Applicants have amended independent Claims 1, 10 and 17, and added new independent Claims 26-28. Therefore, independent Claims 1, 10, 17 and 26-28 should be in condition for allowance. Further, because Claims 4-9, 11-16 and 19-25 depend from independent Claims 1, 10 and 17, respectfully, they are at least as limited, are

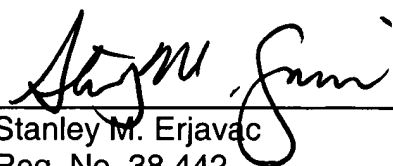
similarly not taught by Garver et al., alone or in combination with Krishnakumar et al. and/or Singier or any of the other references cited, and should also be in condition for allowance. In view of the above amendments and these remarks, Applicants respectfully request the Examiner to reconsider and withdraw the Section 103 rejections to Claims 1, 2, 4-15, 17 and 19-24.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner believes that personal communication will expedite prosecution of this application, she is invited to contact the undersigned at her earliest convenience.

Respectfully submitted,
HARNESS, DICKEY & PIERCE, P.L.C.

Dated: April 28, 2006

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